

After capture, then what? An examination of setbacks in curtailing piracy and armed robbery in Africa through prosecution of offences.

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Waters around the Eastern and Western axis of the African continent have in the last decade remained at the forefront of global popularity due to the maritime security challenges associated with piracy and armed robbery at sea. As a response to the menace, increased patrolling of criminal infested waters translates generally to a potential increase in the number of arrests of pirates and sea robbers. Following arrest, several alternatives as to where prosecution of suspected criminals should occur, exists. This paper identifies and examines the alternatives of the place of prosecution of maritime criminals arrested within or around African piracy hotspots. It recognises that while states outside the continent may engage the universal jurisdiction principle to arrest pirates, practical realities, especially in the Gulf of Guinea makes coastal states usually responsible for making arrests. The paper observes that a gap currently exists in the prosecution of pirates and maritime criminals by African states. It argues that by ignoring the significance of prosecutorial measures, states local to the piracy hotspots contribute negatively to effectively curtailing contemporary piracy in their respective waters and international waters thereof. The paper concludes with recommendations among others that in order to attain the aspiration of a peaceful and secure Africa, states in the region as a matter of urgency need to commit to enacting and enforce appropriate legal framework for prosecuting pirates under their respective national laws.

Piracy, Armed Robbery against Ships, Maritime Security, Legislation.

1.0 Introduction

Africa as a continent in different fora and instruments in recent years consistently states the desire to embrace her water bodies as part of the move to attain the prospects of an ocean enabled economy.¹ For instance, the continent in goal 6, of the Agenda 2063, aspires to ensure

¹ *Africa's Integrated Maritime Strategy 2050* (adopted 27 January, 2014); *African Charter on Maritime Safety and Security and Development in Africa* (adopted October 2016); *Agenda 2063: The Africa we Want: An Overview of Agenda 2063*, (2016).

that the maritime domain contributes to an accelerated economic growth in the continent.² Unfortunately, waters around the Eastern and Western axis of the African continent have in the last decade remained at the forefront of global popularity due to the maritime security challenges associated with piracy and armed robbery at sea.³ The international community identifies waters off the coast of Somalia and around the Nigeria-Benin axis as among the top five piracy hotspots. According to IMO statistics, about 877 attacks occurred around East Africa from 2008 till date.⁴ Attacks on the opposite side of the continent according to the same source, number about 427 from 2011 till date.⁵ Clearly the security challenges possess the potential to derail the blue economy growth aspirations of the continent while driving the continent further from achieving other goals related to security in the continent. As a response to the menace, increased patrol of these waters occurs by the navies of countries in the continent and even in some cases, foreign navies. These patrols translating generally to an increase in the number of maritime criminals apprehended.

This paper seeks to examine what happens after the arrest, in the context of the prosecution of the suspected criminals. International law provides for the exercise of jurisdiction to prosecute the offence of piracy and armed robbery against ships. Employing the underlying theoretical perspectives of securitisation and cooperation, the paper contends that African states should in

² *Agenda 2063: The Africa we Want: An Overview of Agenda 2063*, (2016),

https://au.int/sites/default/files/documents/33126-doc-11_an_overview_of_agenda.pdf

³ This paper acknowledges the distinction between the offence of piracy and armed robbery against ships as provided under United Nations Convention on the Law of the Sea (UNCLOS) Art 101 and the IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery Against Ships Res. A.1025(26). This paper uses the term 'pirates' to refer to both categories of criminals. On the specific definition of the offence of piracy and armed robbery against ships in international law, see United Nations, *Convention on the Law of the Sea* (Montego Bay, 10 December 1982) 1833 UNTS 3/ 21 ILM 1261 (1982) entered into force 16 November 1994), Art 101; IMO, Assembly, *Code of Practice for the Investigation of Crimes of Armed Robbery against Ships*, Resolution A 26/Res.1025 (18 January 2010) Annex 2.2; *African Charter on Maritime Safety and Security and Development in Africa* (adopted October 2016, Art. 1.

⁴ Data culled from International Maritime Organisation(IMO)'s Global Integrated Shipping Information System(GSIS) <<https://gis.imo.org/Public/PAR/Default.aspx>.> last accessed 15 June 2018.

⁵ Data culled from International Maritime Organisation(IMO)'s Global Integrated Shipping Information System(GSIS) <<https://gis.imo.org/Public/PAR/Default.aspx>.> last accessed 15 June 2018.

reality be in the forefront of the arrest and prosecution of pirates and criminals in the region. Expert opinion agree that the offences of piracy and armed robbery against ships creates the environment for other transnational organised crimes to fester. This creates a situation that undermines any effort to raise the standard of living in the respective states. The theories therefore underscore the importance of the states in the region as proximate states to the threat of piracy. A prosecution gap currently exists as a result of several challenges including but not limited to an absence of appropriate domestic legislation conferring jurisdiction as well as a perceived lack of resource and political commitment to prosecuting piracy. The paper in its recommendations places emphasis on the states in the continent developing 'an ownership of the problem' attitude backed by positive action. This change would aid in the redirection of the focus so as to to attain the aspiration of a peaceful and secure Africa

The next section following this introduction considers briefly the the outlook of piracy and armed robbery against ships on both sides of the continent before examining the various alternatives to the prosecution of apprehended criminals. It recognises that the principle of universal jurisdiction may avail all states in certain instances of apprehension of criminals within the maritime domain. However, several legal and practical constraints make it necessary for the prosecutorial measures to be championed by African states connected directly or proximately to these piracy hotspots. The factors that hinder these African states from prosecuting apprehended pirates and criminals is the thrust of the next section. The section acknowledges that the law of the sea presents certain loopholes that states exploit so as to avoid responsibility to prosecute. It argues that the significance of prosecution as a means of deterring attacks are lost when states fail to live up to expectation. In failing to live up to expectation, states local to the piracy hotspots contribute negatively to effectively curtailing contemporary piracy in their respective

waters and international waters thereof. The section before the conclusion identifies several recommendations that would enhance the prosecution of criminals such that attaining the aspiration of a peaceful and secure Africa enjoying ocean based economic growth may be a reality.

2.0 Violence in the Maritime Domain: An outlook of attacks in East and West African waters.

Increased violent attacks in waters off the continent of Africa has and still receives global attention. First, it was acts of piracy emerging off the east African coast and the Gulf of Aden, where pirates using sophisticated weapons, conduct kidnapping and hijacking incidents for the purpose of obtaining ransom.⁶ Evidence fingers the failed state of Somalia as responsible for these attacks. Even with the curtailment of piracy in the region, several members of crew previously kidnapped are still being held hostage. The west of Africa became the center of attention following frequent attacks on product tankers and off shore installation with equally sophisticated weaponry. Attacks in west Africa occur mainly in waters around the Nigeria-Togo and Benin axis.⁷ This area receives a large influx of tankers transporting petroleum product⁸ In

⁶ H. Liwang, "Piracy off West Africa from 2010 to 2014: An Analysis" WMU J Marit Affairs 16 (2017): 386. For an in-depth discussion of the characteristics as well as efforts to counter attacks off the coast of Somalia, see generally R Geiss and A Petrig, *Piracy and Armed Robbery at Sea: The Legal Framework for Counter Operations in Somalia and the Gulf of Aden* (Oxford : Oxford University Press, 2011); J.A. Roach, "Agora: Piracy Prosecutions, Countering Piracy off Somalia: International law and International Institutions," *American Journal of International Law* 104 (2010) :397-416; T. Treves, "Piracy, Law of the Sea and Use of Force: Development off the Coast of Somalia," *European Journal of International Law* 20 (2009) 402.

⁷ Joint War Committee (JWC), "Hull War, Piracy, Terrorism and Related Perils: Listed Areas", *JWLA/022*, December 10, 2015 <http://www.lmalloyds.com/lma/jointwar>. (JWC made no changes to the listed areas the last review in September 2017.)

⁸ For an in-depth discussion on the characteristics as well as efforts to counter attacks in the Gulf of Guinea see generally M. Murphy, "Petro-Piracy: Oil and Troubled Waters" *Orbis* (2013): 433; L. Otto, "Maritime Crime in Nigeria and Waters Beyond: Analyzing the Period 2009 to 2013," *African Insight* 45 (2015): 21; A. Kammal-Deen, "The Anatomy of the Gulf of Guinea Piracy," *Naval College War Review* (2015); S. Oyewole, "Suppressing Maritime Piracy in the Gulf of Guinea: The prospects and Challenges of the Regional Players," *Australian Journal of Maritime & Ocean Affairs* 8 (2016):135; O. Eruaga, "Towards a Normative Shift in Maritime Security

contrast to the east African axis of the continent, West of Africa is home to debatable fragile but not failed states. Additionally, about half of the attacks occur within territorial waters.⁹ However, there is similarity in terms of socio-economic deprivation identified as the root cause or motivation for the attacks.¹⁰ The attacks in both regions are categorised as organised criminal networks that are violent, although criminals in the Gulf of Guinea are tagged as more dangerous.¹¹

The challenge of piracy and sea robbery undermines global market systems. The annual global economic cost of the attacks in the maritime domain has been enormous, pegged cumulatively at over 2 billion USD in 2017 alone, as shown in the figures below.

EAST AFRICA ECONOMIC COST

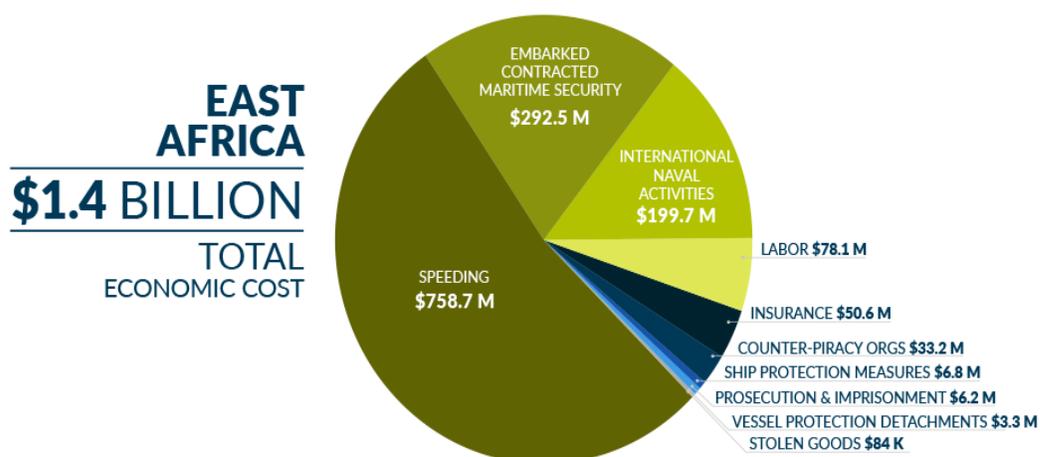


Figure 1: Estimated global cost of East African piracy for 2011. Source: <http://oceansbeyondpiracy.org/reports/sop/east-africa>

Governance: Appraising Private Maritime Security Companies (PMSCs) in Nigeria's Anti-Piracy and Armed Robbery at Sea Institutional Framework" *Akungba Law Journal* 4 no.1(2016):321

⁹ M. Gagain, "Neglected Waters: Territorial maritime Piracy," *New Eng J Intl'l & Comp L* 16 (2010):180

¹⁰ K. Govern, "National Solutions to an International Scourge: of Prosecuting Pirates Domestically as a Viable Alternative to International Tribunals" 19 *U. Miami Int'L & Comm. L. R* (2011) 4

¹¹ S.M Hasan and D. Hassan, "Current Arrangements to Combat Piracy in the Gulf of Guinea Region: An Evaluation" *Journal of Maritime Law and Commerce* 47 (2016):176.

West Africa: Total Economic Cost in 2017

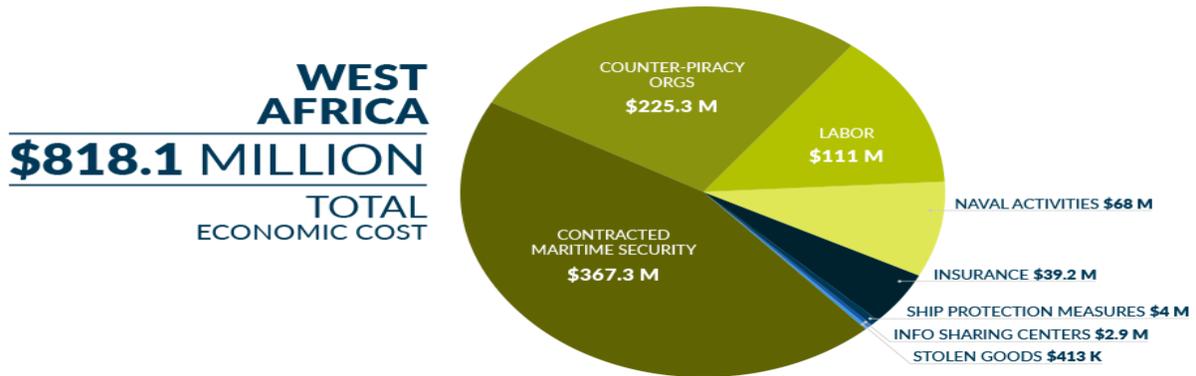


Figure 2 Global cost of West African Piracy in 2017. Source: <http://oceansbeyondpiracy.org/reports/sop/west-africa#economiccostwa>

Apart from the general global economic cost of these attacks, the economies of counties around these hot spots have also taken a hit.¹² For instance, Kenya suffered a drop in profit margin from its 120 million USD dollars agricultural products export in 2011.¹³ Similarly, it was reported in the same 2011 that West African economies lost about \$2 billion in annual revenue as a result of piracy.¹⁴ With the frequency of attacks in the western axis of the continent, stakeholders speculate that a minimum insurance of 200,00 US dollars may be introduced as premium for vessels calling at ports in Nigeria.¹⁵ This would drive up the cost of commodities in the local market. Clearly, the activities of these maritime criminals are detrimental to economic stability

¹² Y. Bala, "Economic, Political, and Social Implications of Piracy in the Gulf of Guinea: Nigeria as a Case Study in *Piracy at Sea*, ed M. Mejia, C.Kojima and M. Sawyer (London : Springer 2013) 191

¹³ A.Bowden and S. Basnet, " The Economic Cost of Somali Piracy 2011," (Working Paper 2012.): 32 http://oceansbeyondpiracy.org/sites/default/files/economic_cost_of_piracy_2011.pdf

¹⁴ Security Council, 6723rd Meeting, statements from Parkistan, Portugal and Colombia < <https://www.un.org/press/en/2012/sc10558.doc.htm>>

¹⁵ S. Sulamion, "Piracy sustains high shipping costs on Nigerian waters" *The Guardian Newspaper* 4 June 2018.

of proximate African states and the continent in general. In a bid to curtail the attacks within the maritime zones, both sides of the African continent witnessed increased naval patrols.

3.0 Establishing jurisdiction for the apprehension and prosecution of maritime criminals.

The legal framework guiding the exercise of criminal jurisdiction for piracy and armed robbery against ships is derived from several instruments existing at international, regional and national level. international framework contained in customary international law, SUA Convention, region and of course, national law.

Customary international law as evidenced by UNCLOS defines the offence of piracy and requests that states cooperate for the purpose of its repression. Notably, debates surrounding whether acts of violence affecting international shipping in the Africa are categorised as piracy as defined under UNCLOS 101 or armed robbery against ships. An offence under international law is piracy if it occurs outside the jurisdiction of any state.¹⁶ Debates of as to whether incidents were acts of piracy or armed robbery if previously in existence have been laid to rest for attacks around east Africa, following the UN Security Resolution that transformed territorial waters into international waters for the purpose of suppressing these attacks.¹⁷ In the case of the Gulf of Guinea, the debate still lingers. A majority view exists that UNCLOS Art. 58(2) clarifies the definition of piracy set out in article 101 and universal jurisdiction over piracy as set out in article 105 apply in the exclusive economic zones of states.¹⁸ An increasing number of attacks

¹⁶ UNCLOS Art 101

¹⁷ UN Security Council, *Security Council, Resolution 1816, On acts of piracy and armed robbery against vessels in territorial waters and the high seas off the coast of Somalia*, (S/RES/1816) ¶ 2,3 and 5 (June 2, 2008) (Res. 1816)<http://www.un.org/en/sc/documents/resolutions/2008.shtml>.

¹⁸ SC, "Report of the Secretary-General on Specialized Anti-Piracy Courts in Somalia and Other States in the Region" (S/2012/50) (January 2012) 14 http://repository.un.org/bitstream/handle/11176/16544/S_2012_50-EN.pdf?sequence=3&isAllowed=y.

occur further offshore from the territorial waters, up to 50nm.¹⁹ Identifying the category of the offence connects with whether states of all nationality can patrol as in the case of piracy or the only a specific African state in whose waters the act occurs is responsible for security.²⁰

States ordinarily have no criminal jurisdiction with respect to offences to which there is no nexus. However, the offence of piracy is an exception to this principle.²¹ The basis for universal jurisdiction in the apprehension of criminals hinges on UNCLOS Art 105 which provides that

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board.

All states by virtue of UNCLOS Art 105 can seize a pirate ship and arrest members of its crew, as long there is reasonable ground to believe the ship is committing piracy and the arrest occurs in the high seas.²² The state performing the arrest is permitted to decide the penalty actions that are implemented against the pirate and pirate ship.²³

Another basis for establishing criminal jurisdiction is derivable from the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and its 2005²⁴ SUA convention highlights a number of acts at sea including seizure and unauthorised control as

¹⁹ The *MV China Frost* was attacked 40nm off the Nigerian coast on the 24 of February, 2018 while the Liberian Tanker (name withheld) attacked on the 22 of march 2018 was 53nm of the Nigerian coast at the time of the incident. See IMO “Monthly Circular 260”; IMO, “Monthly Circular 261”.

²⁰ UNCLOS Art 105

²¹ Y.M Dutton, “Maritime Piracy and the Impunity Gap: Insufficient National Laws or a Lack of Political Will?,” 86 *Tulane Law Review* (2012) 1120

²² See also UNCLOS, Art 110; D. Chang, “Piracy Laws and the Effective Prosecution of Pirates” 33 *Boston College International & Comparative Law Review* (2010) : 274

²³ UNCLOS, Art 105.

²⁴ Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS 201. For a discussion as to whether the SUA Convention applies to piracy and armed robbery against ships, see M. Mejia and P. K. Mukherjee, “The SUA Convention 2005: A Critical Evaluation of its Effectiveness in Suppressing Maritime Criminal Acts,” *Journal of International Maritime Law* 12, no. 3(2006): 171

punishable under the national laws of the state parties to the convention. Rather than create universal jurisdiction for all states to exercise prosecutorial control, the convention provides for an obligatory jurisdiction based on certain criteria. The SUA Convention imposes an obligation on states that are linked with the attacked vessel, victim or suspected pirate, as well as where the pirate is found, to exercise criminal jurisdiction over the offence or extradite the offender to a state where he can be tried.²⁵ Furthermore, the location of the act under the convention is immaterial. Art. 4 of SUA ensures that states can exercise criminal jurisdiction under its wide geographical extent.

The prosecution of pirates requires the existence of specific domestic legislation that proscribes the act as an offence and provides punishment for it.²⁶ Furthermore, for offences that occur domestic legislation is required to criminalise a violent attack that occurs within territorial waters.

From the legal framework for establishing criminal jurisdiction, states outside as well as within the African continent have jurisdiction to apprehend and prosecute pirates, depending on the particular situation. Although the jurisdiction of foreign states over the criminal acts that cause violent interference with shipping is established under the pathways discussed above, other branches of international law such as international human rights and humanitarian law create some constraints on the prosecution of pirates by states located far away from where the offence occurred.²⁷ For instance, in September 2008, the Danish naval ship *Absalon* after 6 days released 10 pirates captured off the coast of Somalia. Denmark refused to prosecute them, on among other grounds considerations of humanitarian law that would allow the pirates seek asylum after

²⁵ SUA, art 10

²⁶ The principles of monist and dualist systems in international law are not applicable to this offence as international law does not provide for the penalties attached to this offence even though it criminalises the act. Hence, the offence of piracy requires positive action by the state.

²⁷ M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) *Wisconsin International Law Journal* (2013): 58

serving the sentence.²⁸ Again, human rights principles recognise the rights of persons remain active even when they are criminal suspects. Hence, detention of suspects for days before bringing them before the court has been identified as a breach of fundamental human rights.²⁹ In 2014, the European Court of Human Rights ordered France to pay compensation to nine Somali pirates for failing to bring them before a French court, without delay.³⁰ These constraints have put a dent on the exercise of criminal jurisdiction by states outside the continent.³¹ An increased involvement of African states, especially those around the area where piracy persists, to play a major role in the prosecution of pirates, has been put forward as among the alternatives of ensuring prosecution of pirates off the east of Africa.³² This suggestion is also rational for west Africa, especially since a large number of attacks occur within territorial waters.

4.0 The exercise of criminal jurisdiction over piracy and armed robbery at sea by African states

The practical realities of engaging the alternatives to the prosecution of apprehended pirates reveal as discussed in the previous section leads to a conclusion that African states have a major role to play. This is because of the proximity of the attacks, in terms of location. The the immediate effects of maritime security threats occur and concentrate easily over a short

²⁸ T. Treves, "Piracy, Law of the Sea and Use of Force: Development off the Somalia" 2European Journal of International Law 20 no. 2 (2009): 408

²⁹ Council of Europe, *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* s Amended by Protocol No. 11, (Strasbourg) *Council of Europe Treaty Series 155*, Art5(3). See also *African Charter on Human and Peoples' Rights*, (Banjul 27 June 1981) 21 I.L.M. 58, Art. 7(1)(d) (entered into force 1982) (Banjul Charter).

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³¹ T. Treves, "Piracy, Law of the Sea and Use of Force: Development off the Somalia" 2European Journal of International Law 20 no. 2 (2009): 409; M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) Wisconsin International Law Journal (2013) 57

³² M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) Wisconsin International Law Journal (2013): 58.

distance.³³ Unfortunately, prosecuting pirates have been more difficult than catching them.³⁴ Several factors hinder the involvement of African states especially in the Gulf of Guinea from championing the prosecution of pirates as a means of contributing to curbing the rate of attacks in the region.

a) Legislative constraints

Several states suffer from an absence of or the existence of inappropriate municipal laws. International law obligates states to positively suppress piracy.³⁵ One of such means is the through the prosecution of apprehended pirates. Several scholars argue that the obligation to cooperate in the repression of piracy does not provide a corresponding obligation in form of a requirement to criminalise and provide penalties and punishment for the offence of piracy.³⁶ Similarly, although there is no international instrument that obligates states to criminalise and prosecute suspects for armed robbery against ships. From this perspective, fulfilling the suppression obligation through a legislation that criminalises piracy and establishes penalties is discretionary. In the absence of the appropriate legislation, the crime of piracy and armed robbery against ships does not legally exist in these states. Any form of deterrence from Navies patrolling the waters ends at sea.³⁷ Piracy and piratical acts in the process become a high risk, low profit activity³⁸

A different perspective to the interpretation of Art 105 is that the requirement to suppress piracy encompasses the legal requirement to enact laws for the prosecution of piracy.

³³ B. Buzan et al, *Security: A New Framework for Analysis*, (Colorado: Lynne Rienner Publishers 1998)11-12

³⁴ M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) *Wisconsin International Law Journal* (2013) 48-50.

³⁵ UNCLOS, Art 105

³⁶ M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) *Wisconsin International Law Journal* (2013)54.

³⁷ A. Anyimadu, *Maritime Security in the Gulf of Guinea: Lessons Learned from the Indian Ocean* (Africa 2013/02, Chatam House 2013) :7

³⁸ K. Govern, "National Solutions to an International Scourge: of Prosecuting Pirates Domestically as a Viable Alternative to International Tribunals," 19 *U. Miami Int'L &Comm. L. R* (2011): 40

Churchill argues that the prosecution of criminals is implied in the Art 100 obligation, without the need to expressly provide for it.³⁹ This perspective eliminates the excuse of a failure to prosecute but it does not obviate the practical problem that the suspect can not be penalised for an offence that does not exist in law. For instance, the pirate vessel *MT Dejekun* and other pirates apprehended for committing the offence of piracy against the *MV Maximus* are currently charged for offences other than piracy because of the absence of legislation.

Notably, the United Nations and the IMO continue to encourage states to incorporate piracy under international law into domestic legislation to provide the legal background for the prosecution of piracy.⁴⁰ Several states especially east of Africa have enacted new or amended their national laws solve this problem. Kenya,⁴¹ Seychelles,⁴² Mauritius,⁴³ and the United Republic of Tanzania⁴⁴ have reformed their national laws to enable the prosecution of pirates. However, some states around the Gulf of Guinea still suffer from poorly crafted legislation⁴⁵ or no legislation at all.⁴⁶

Unlike the UNCLOS provision, SUA's obligation to extradite or prosecute imposes an obligation on states to take affirmative action to operationalize the role of their respective national courts. This means that in the absence of appropriate legislation, a state may choose

³⁹ Robin Churchill, "The Piracy Provisions of the UN Convention on the Law of the Sea -Fit for Purpose?," in *The Law & Practice Of Piracy At Sea: European & International Perspectives*, eds. P.Koutrakos and A. Skordas (2014) 21-23

⁴⁰ See UNSC **1897 (2009)** and Resolution **1976** (2011),; S.C. Res. 1918 (Apr. 27, 2010); S.C. Res. 2018 (Oct. 31, 2011); IMO Res. A.1025(26); Res. A. 1044(27) (Nov. 30, 2011).

⁴¹ Merchant Shipping Act, 2009

⁴² Penal Code 1955, section 65

⁴³ Piracy and Maritime Violence Act 2011 (No. 39 of 2011), section 3

⁴⁴ Merchant Shipping Act (2010 amendment), section 341

⁴⁵ For instance, Togo's *Code de la Marine Marchande* which defines acts of piracy broadly to include armed groups on board ships.

⁴⁶ Nigeria does not currently have a legislation on piracy. The closest to municipal proscription in Nigeria is contained in the Criminal Code section 403 which criminalises stealing with violence is the closest to municipal proscription. The location of the offence is not relevant to the *actus reus*. The elements of the crime under section 403 do not reflect piracy under international law, neither does it cover all the offences contemplated within the definition of armed robbery against ships.

to exercise the option to extradite the suspect. However, the seemingly improved provisions of the SUA as it relates to the jurisdiction over unlawful violence at sea is largely watered down by the fact that it applies only to state parties.⁴⁷

b) Economic and technical constraints in the prosecution of pirates.

Prosecuting pirates requires adherence to technical issues. Successful prosecution of crimes rests on conducting appropriate investigation to gather enough evidence to prove the guilt of the suspect.⁴⁸ Investigative resources and capability to conduct investigation to secure conviction is limited. Furthermore, prosecution is expensive. The estimated cost for prosecution and imprisonment of pirates of 967 pirates connected to East African piracy for 2017 is pegged at 6,240,434.40 US Dollars. Such huge financial commitment may serve as a disincentive to African states with no link to the the maritime offences in question (except under the obligation to repress piracy) from prosecuting maritime criminals or engage in extradition agreements.

Some African states have enjoyed through the UNODC Counter Piracy Programme, as well as other international mechanisms, improved capacity in terms of funding and institutional support for the prosecution and enforcement processes in relation to piracy.⁴⁹ However, it remains to be seen if these states, particularly those receiving funding for the prosecution and subsequent care of the suspect, will commit their resources to continue exercising criminal jurisdiction outside international funding. The actions of these states prior to receiving funding are perhaps indicative of the level of involvement to expect.

⁴⁷ As at January 2018, the SUA Convention has 166 state parties while the 2005 protocol has only 43 parties.

⁴⁸ H.Fouche, "The Law Enforcement Approach to Combating Piracy" in in *Piracy at Sea*, ed M. Mejia, C.Kojima and M. Sawyer (London : Springer 2013) 25

⁴⁹ M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) *Wisconsin International Law Journal* (2013)72

Furthermore, effective coordination within and across borders has become synonymous with the African setting. This characteristic feature is observable in inter-agency relationship in several countries, including Nigeria.

c) Political Will

Closely tied to the limitation in terms of economic and capacity to conduct proper investigation, is a perceived lack of political will to engage in the prosecution of pirates and criminals at sea. The absence of political will is arguably associated with the failure to appropriately securitise the challenge of piracy and armed robbery against ships. States in the region affirm their commitments to security of navigation, including through the repression of piracy and armed robbery against ships in several instruments such as Djibouti Code of Conduct,⁵⁰ the *Code of Conduct for the Suppression of Piracy, Armed Robbery Against Ships and Illicit Maritime Activity in West and Central Africa* (Yaoundé Code) and the the African Union Charter on Maritime Security, Safety and Development.⁵¹ However, there is a general failure of states adopt a holistic approach towards the commitments contained in these instruments. At best, state practice focus on transit vulnerabilities such as improving naval patrols to deter the commission of crime.⁵² This reflects a superficial commitment to the process of repressing maritime crimes. Karim argues that the obstacle to prosecution of pirates is not law per se but the absence of the political will of states to commit to putting in place the necessary processes and investment to ensure the prosecution of pirates.⁵³

⁵⁰ *Code of Conduct Concerning the Repression of Piracy and Armed Robbery Against Ships in the Western Indian Ocean and the Gulf of Aden* (Djibouti 29 January 2009)

⁵¹ *African Charter on Maritime Safety and Security and Development in Africa* (adopted October 2016)

⁵² A. Osinowo, "Combating Piracy in the Gulf of Guinea" African Security Brief 30 no. 4 (2015)

⁵³ M.D S. Karim, "Prosecution of Maritime Pirates: The national Court is Dead- Long live the National Court?" 32(1) *Wisconsin International Law Journal* (2013) 84.

5.0 Improving the prosecution of pirates by African states: What is good for the East, is good for the West.

The examination of the challenges facing African countries in the prosecution of maritime criminals shows distinctions in the trend of efforts towards the actual prosecution of maritime criminals. The involvement of African states in the prosecution of pirates apprehended off the coast of Somalia has enjoyed some level of realisation because of the involvement of the foreign navies, in the apprehension of pirates, the conclusion of extradition agreements, a re-assessment of local legislation and the funding mechanism in place. However, the root cause of piracy in the East of Africa still remains unattended. Somalia still remains effectively a state whose socio-economic and political stability is a threat to security in the region. Therefore, it is imperative that the states in the region ensure that current developments are sustained to address future challenges.

The west of Africa also enjoys encouragements from the global community. However, contrary to the trend off the coast of Somalia, there are no foreign navies independently patrolling the international waters off the Gulf of Guinea. Apprehension and subsequent prosecution of pirates is strictly carried out by the local navies that are known to have capacity limitations.⁵⁴ The international community currently provides support to the region in trying to suppress violence at sea by strengthening the legal and enforcement at sea operations.⁵⁵ Direct funding from the international community is unavailable for conducting actual prosecutions.

⁵⁴ This is without prejudice to the right of other states that can establish jurisdiction by virtue of SUA convention to prosecute. See SUA Convention, Art. 6

⁵⁵ For instance, the Tran-Atlantic Maritime Criminal Justice Programme, co-sponsored by the U.S. Department of State's Bureau of International Narcotics and Law Enforcement, U.S. Africa Command (USAFRICOM), and the Africa Center for Strategic Studies (ACSS), in partnership with the U.S. Coast Guard

Exploring the challenges in the prosecution of criminals in both sides of Africa where maritime security challenges reveals the need to develop (in the case of the west of Africa) and sustain (in the east of Africa) workable home-grown regulation and policies that address the issue of prosecution of maritime criminals. While welcoming assistance offered by the global community, individual Africa states and the continent as a collective need to be more proactive in owning the problem of piracy and other security challenges. The level of securitisation attached to the problem of piracy and armed robbery at sea by the states, determine the amount of resources that the states are willing to invest in repressing the offences. Developing an “owning the problem” attitude towards the issue of maritime security that currently plagues the continent would aid the development of the political will to tackle the problem. The existence of a political will to tackle the problem transcends the present state of superficial endorsements to actual implementation of well- thought-out strategies, including the enactment of appropriate national legislation. A result-based approach to enable ensure strides in implementing the strategies can be monitored and assessed will is important in ensuring focus.

6.0 Conclusion

With the recent resurgence of attacks off the coast of Somalia, and the persistence of attacks around and off the coast of Nigeria, it is safe to say that the menace of piracy and armed robbery against ships is far from being repressed.

The economic and security implication for individual African states and the continent collectively is such that all hands must be on deck to ensure that the problem is curtailed. The prosecution of pirates is one of such means that contributes to the repression of piracy and armed robbery against ships. While acknowledging the challenges that states proximate to piracy

hotspots face, it is imperative that the value of prosecution of criminals as a pathway to repressing piracy is not neglected.